

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2008-0089-WQ-E **TCEQ ID:** RN101918050 **CASE NO.:** 35190
RESPONDENT NAME: City of Gainesville

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED-ORDER	<input checked="" type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: City of Gainesville collection system, located at Cole Street and Anthony Street, Gainesville, Cooke County</p> <p>TYPE OF OPERATION: Collection system with manholes</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on June 9, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Pamela Campbell, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-4493; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: The Honorable Glenn Loch, Mayor, City of Gainesville, 200 South Rusk Street, Gainesville, Texas 76240 Mr. Tad W. Jenkins, Project Manager, City of Gainesville, 200 South Rusk Street, Gainesville, Texas 76240 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: October 29, 2007 and January 4, 2008</p> <p>Date of NOV/NOE Relating to this Case: December 17, 2007 (NOE)</p> <p>Background Facts: This was a routine investigation and a record review. This unauthorized discharge resulted in a fish kill of approximately seventy-five fish.</p> <p>WATER</p> <p>1) Failed to prevent the unauthorized discharge of untreated wastewater into or adjacent to water in the state [TEX. WATER CODE § 26.121(a)(1) and Texas Pollutant Discharge Elimination System Permit No. WQ0010726001 Permit Conditions No. 2.g.].</p> <p>2) Failed to pay the Consolidated Water Quality assessment fee for Fiscal Year 2008 and associated late fee for Account Number 23005836 [TEX. WATER CODE §§ 5.702 and 26.0135(h) and 30 TEX. ADMIN. CODE § 21.4].</p>	<p>Total Assessed: \$6,050</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$6,050</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> <p>Findings Orders Justification: Human health and the environment has been exposed to pollutants which exceed levels that are protective.</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Site:</p> <p>a. On October 29, 2007, the affected area was isolated by a dam, allowing the contaminated water to be vacuumed up and transported to the wastewater treatment facility for treatment;</p> <p>b. On October 29, 2007, debris at the affected area was collected and properly disposed of;</p> <p>c. On October 29, 2007, cleared the blockage; and</p> <p>d. The access manhole where the blockage was located has been raised to allow access and inspection by the Respondent. The 8-inch lines in this area will be inspected and cleaned on a regular basis to prevent future unauthorized discharges.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to, within 30 days after the effective date of this Agreed Order, pay all outstanding fees, including any associated penalties and interest.</p>

Additional ID No(s): TPDES Permit No. WQ0010726001



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision November 6, 2007

TCEQ

DATES	Assigned	2-Jan-2008	Screening	7-Jan-2008	EPA Due	
	PCW	6-Feb-2008				

RESPONDENT/FACILITY INFORMATION

Respondent	City of Gainesville		
Reg. Ent. Ref. No.	RN101018050		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	35190	No. of Violations	2
Docket No.	2008-0089-WQ-E	Order Type	Findings
Media Program(s)	Water Quality	Enf. Coordinator	Pamela Campbell
Multi-Media		EC's Team	Enforcement Team 1
Admin. Penalty \$	Limit Minimum	\$0	Maximum
			\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *Subtotal 1* **\$5,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 21% Enhancement *Subtotals 2, 3, & 7* **\$1,050**

Notes: The Respondent has three NOV's for unrelated violations and has three months of self-reported effluent violations.

Culpability No 0% Enhancement *Subtotal 4* **\$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 0% Reduction *Subtotal 5* **\$0**

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes: The Respondent does not meet the good faith criteria.

Total EB Amounts \$1 **Subtotal 6** **\$0**
 Approx. Cost of Compliance \$5,000 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 *Final Subtotal* **\$6,050**

OTHER FACTORS AS JUSTICE MAY REQUIRE 0% *Adjustment* **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount **\$6,050**

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty **\$6,050**

DEFERRAL

0% Reduction *Adjustment* **\$0**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

No deferral is recommended for Findings Orders.

PAYABLE PENALTY **\$6,050**

Screening Date 7-Jan-2008

Docket No. 2008-0089-WQ-E

PCW

Respondent City of Gainesville

Policy Revision 2 (September 2002)

Case ID No. 35190

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN101918050

Media [Statute] Water Quality

Enf. Coordinator Pamela Campbell

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	3	15%
	Other written NOVs	3	6%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgments or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 21%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The Respondent has three NOVs for unrelated violations and has three months of self-reported effluent violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 21%

Screening Date 7-Jan-2008		Docket No. 2008-0089-WQ-E		PCW	
Respondent City of Gainesville		<i>Policy Revision 2 (September 2002)</i>			
Case ID No. 35190		<i>PCW Revision November 6, 2007</i>			
Reg. Ent. Reference No. RN101918050					
Media [Statute] Water Quality					
Enf. Coordinator Pamela Campbell					
Violation Number	1				
Rule Cite(s)	Tex. Water Code § 26.121(a)(1) and TPDES Permit No. WQ0010726001 Permit Conditions No. 2.g.				
Violation Description	<p>Failed to prevent the unauthorized discharge of untreated wastewater into or adjacent to water in the state. Specifically, on October 29, 2007, the Respondent notified the TCEQ Dallas/Fort Worth Regional Office that an unauthorized discharge of untreated wastewater into Pecan Creek had occurred. On October 28, 2007 a grease blockage in the Respondent's collection system caused seven manholes to overflow and discharge approximately 9,600 gallons of raw sewage into Pecan Creek. This unauthorized discharge resulted in the death of approximately 75 fish, as documented during the October 29, 2007 investigation.</p>				
				Base Penalty	\$10,000
>> Environmental, Property and Human Health Matrix					
OR	Harm				
	Release	Major	Moderate	Minor	
	Actual	x			Percent 50%
	Potential				
>> Programmatic Matrix					
	Falsification	Major	Moderate	Minor	
					Percent 0%
Matrix Notes	Human health or the environment has been exposed to pollutants which exceed levels that are protective of human health or environmental receptors as a result of this violation.				
				Adjustment	\$5,000
					\$5,000
Violation Events					
Number of Violation Events		1		Number of violation days 1	
mark only one with an x	daily	x			
	monthly				
	quarterly				
	semiannual				
	annual				
	single event				
				Violation Base Penalty	\$5,000
One daily event is recommended from the date of the unauthorized discharge (October 28, 2007) to the date that compliance was achieved (October 29, 2007).					
Economic Benefit (EB) for this violation				Statutory Limit Test	
Estimated EB Amount		\$1		Violation Final Penalty Total	\$6,050
				This violation Final Assessed Penalty (adjusted for limits)	\$6,050

Economic Benefit Worksheet

Respondent City of Gainesville
Case ID No. 35190
Reg. Ent. Reference No. RN101918050
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal	\$5,000	28-Oct-2007	29-Oct-2007	0.0	\$1	n/a	\$1
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

This is the estimated cost to vacuum up the contaminated wastewater and transport it back to the wastewater treatment facility for treatment, and collect and properly dispose of debris and dead fish from the affected area. The date required is the date that the unauthorized discharge occurred and the final date is the date the Respondent cleaned up the affected area.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,000

TOTAL

\$1

Screening Date 7-Jan-2008		Docket No. 2008-0089-WQ-E		PCW	
Respondent City of Gainesville		<i>Policy Revision 2 (September 2002)</i>			
Case ID No. 35190		<i>PCW Revision November 6, 2007</i>			
Reg. Ent. Reference No. RN101918050					
Media [Statute] Water Quality					
Enf. Coordinator Pamela Campbell					
Violation Number	<input type="text" value="2"/>				
Rule Cite(s)	Tex. Water Code §§ 5.702 and 26.0135(h), and 30 Tex. Admin. Code § 21.4				
Violation Description	Failed to pay the Consolidated Water Quality assessment fee for Fiscal Year 2008 and associated late fee for Account Number 23005836.				
Base Penalty					<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

OR		Harm			
	Release	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
					Percent <input type="text" value="0%"/>
Matrix Notes					
Adjustment					<input type="text" value="\$10,000"/>
					<input type="text" value="\$0"/>

Violation Events

Number of Violation Events <input type="text"/>		<input type="text"/> Number of violation days	
<i>mark only one with an x</i>	daily	<input type="text"/>	
	monthly	<input type="text"/>	
	quarterly	<input type="text"/>	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
	single event	<input type="text"/>	
Violation Base Penalty <input type="text" value="\$0"/>			
No penalty is recommended because penalty and interest will be assessed at the next billing.			

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$0"/>	Violation Final Penalty Total <input type="text" value="\$0"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$0"/>	

Economic Benefit Worksheet

Respondent City of Gainesville
Case ID No. 35190
Reg. Ent. Reference No. RN101918050
Media Water Quality
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

N/A

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

N/A

Approx. Cost of Compliance

\$0

TOTAL

\$0

Compliance History

Customer/Respondent/Owner-Operator:

Regulated Entity:

ID Number(s):

CN600615207

RN101918050

WASTEWATER

WASTEWATER

WASTEWATER

PRETREATMENT

PRETREATMENT

WASTEWATER LICENSING

City of Gainesville

CITY OF GAINESVILLE WW

PERMIT

PERMIT

PERMIT

PERMIT

EPA ID

LICENSE

Classification: AVERAGE

Classification: AVERAGE

Rating: 2.70

Site Rating: 0.23

WQ0010726001

TPDES0022357

TX0022357

WQ0010726001

TX0022357000

WQ0010726001

Location:

LOCATED ON THE EAST BANK OF

THE ELM FORK OF THE TRINITY

RIVER AND APPR. 1.5 MILES SOUTH OF

THE INTERSECTION OF IH 35 AND FM 51

COLE STREET AND ANTHONY STREET,

GAINESVILLE, COOKE COUNTY, TX

REGION 04 - DFW METROPLEX

Rating Date: 9/1/2007 Repeat Violator: NO

TCEQ Region:

Date Compliance History Prepared:

Agency Decision Requiring Compliance History:

Compliance Period:

January 03, 2008

Enforcement

January 03, 2003 to January 03, 2008

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Pamela Campbell Phone: 512 239-4493

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes

2. Has there been a (known) change in ownership of the site during the compliance period? No

3. If Yes, who is the current owner? N/A

4. If Yes, who was/were the prior owner(s)?

N/A

5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 02/18/2003 (469450)

2 02/19/2003 (280874)

3 03/27/2003 (27651)

4 03/27/2003 (469456)

5 04/03/2003 (24128)

6 04/04/2003 (469482)

7 04/16/2003 (469464)

8 05/16/2003 (469470)

9 05/27/2003 (60609)

10 07/02/2003 (469476)

11 08/21/2003 (469488)

12 09/24/2003 (469494)

13 10/23/2003 (469500)

14 11/21/2003 (469507)

15 12/29/2003 (469514)

16 01/16/2004 (469521)

17 02/20/2004 (469451)

18 03/24/2004 (469460)

19 04/19/2004 (469465)

20 05/24/2004 (469471)

21 06/18/2004 (469477)

22 07/26/2004 (469483)

23 08/30/2004 (469489)

24 09/22/2004 (469495)

25 10/28/2004 (469501)

26 11/22/2004 (469508)

27 12/16/2004 (469515)

28 01/03/2005 (469522)

29 02/21/2005 (469452)

30 03/18/2005 (373177)

31 03/23/2005 (469457)

32 04/22/2005 (469466)

33 05/16/2005 (469472)

34 06/23/2005 (469478)

35 08/12/2005 (469484)

36 08/19/2005 (469490)

37 09/22/2005 (469496)

38 10/21/2005 (469502)

39 11/14/2005 (469523)

40 11/18/2005 (469509)

41 12/16/2005 (469516)

42 02/23/2006 (469453)

43 03/22/2006 (469458)

44 04/20/2006 (498894)

45 05/25/2006 (498895)

46 06/27/2006 (498896)

47 07/07/2006 (498897)

48 08/14/2006 (520909)

49 09/21/2006 (520910)

50 10/02/2006 (510594)

51 10/23/2006 (545366)

52 11/10/2006 (545369)

53 11/16/2006 (545367)
54 12/18/2006 (545368)
55 01/16/2007 (535986)
56 02/08/2007 (539592)
57 02/16/2007 (576842)
58 03/21/2007 (576843)
59 04/18/2007 (576844)
60 05/16/2007 (576845)
61 06/14/2007 (559173)
62 06/18/2007 (576846)
63 07/13/2007 (576847)
64 07/31/2007 (570287)
65 08/01/2007 (607783)
66 09/17/2007 (607784)
67 12/17/2007 (611864)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 03/26/2003 (27651)
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 317 317.4(a)(8)
Description: Failure to test the RPZ backflow prevention device on an annual basis.

Date: 03/31/2005 (469466)
Self Report? YES Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit parameter

Date: 07/31/2005 (469490)
Self Report? YES Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit parameter

Date: 01/08/2007 (535986)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 319, SubChapter C 319.302(b)(3)
30 TAC Chapter 319, SubChapter C 319.302(c)
Description: Failure to submit public notification of a SSO in a timely manner.

Date: 06/08/2007 (559173)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 315, SubChapter A 315.1
40 CFR Chapter 403, SubChapter N, PT 403 403.8(f)(5)
Description: Failure to escalate enforcement against a significantly non-compliant SIU.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 315, SubChapter A 315.1
40 CFR Chapter 403, SubChapter N, PT 403 403.8(f)(2)(v)
Description: Failure to sample CBS for all categorical limits in pretreatment year 2006.

Date: 08/31/2007 (607784)
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF GAINESVILLE
RN101918050**

§ **BEFORE THE**
§
§ **TEXAS COMMISSION ON**
§
§ **ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2008-0089-WQ-E

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Gainesville ("the City") under the authority of TEX. WATER CODE chs. 5, 7, and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the City presented this agreement to the Commission.

The City understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the City agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon the City.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The City owns and operates collection system manholes located at Cole Street and Anthony Street in Gainesville, Cooke County, Texas (the "Site").

2. The City has discharged sewage into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. During an investigation on October 29, 2007, TCEQ staff documented an unauthorized discharge of untreated wastewater. Specifically, on October 29, 2007, the City notified the TCEQ Dallas/Fort Worth Regional Office that an unauthorized discharge of untreated wastewater into Pecan Creek had occurred. On October 28, 2007 a grease blockage in the City's collection system caused seven manholes to overflow and discharge approximately 9,600 gallons of raw sewage into Pecan Creek. This unauthorized discharge resulted in the death of approximately 75 fish, as documented during the October 29, 2007 investigation.
4. During a record review conducted on January 4, 2008, TCEQ staff documented that the City failed to pay the Consolidated Water Quality assessment fee for Fiscal Year 2008 and associated late fee for Account Number 23005836.
5. The City received notice of the violations on or about December 22, 2007.
6. The Executive Director recognizes that the City has implemented the following corrective measures at the Site:
 - a. On October 29, 2007, affected area was isolated by a dam, allowing the contaminated water to be vacuumed up and transported to the wastewater treatment facility for treatment;
 - b. On October 29, 2007, debris at the affected area was collected and properly disposed of;
 - c. On October 29, 2007, cleared the blockage; and
 - d. The access manhole where the blockage was located has been raised to allow access and inspection by the City. The 8-inch lines in this area will be inspected and cleaned on a regular basis to prevent future unauthorized discharges.

II. CONCLUSIONS OF LAW

1. The City is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, the City failed to prevent the unauthorized discharge of untreated wastewater into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121(a)(1) and Texas Pollutant Discharge Elimination System Permit No. WQ0010726001 Permit Conditions No. 2.g.
3. As evidenced by Findings of Fact No. 4, the City failed to pay the Consolidated Water Quality assessment fee for Fiscal Year 2008 and associated late fee for Account Number 23005836, in violation of TEX. WATER CODE §§ 5.702 and 26.0135(h) and 30 TEX. ADMIN. CODE § 21.4.

4. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the City for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
5. An administrative penalty in the amount of Six Thousand Fifty Dollars (\$6,050) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The City has paid the Six Thousand Fifty Dollar (\$6,050) administrative penalty.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The City is assessed an administrative penalty in the amount of Six Thousand Fifty Dollars (\$6,050) as set forth in Section II, Paragraph 5 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the City's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Gainesville, Docket No. 2008-0089-WQ-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

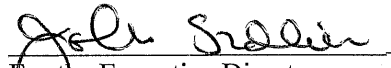
2. The City shall, within 30 days after the effective date of this Agreed Order, pay all outstanding fees, including any associated penalties and interest and with the notation "Re: City of Gainesville – Account Number 23005836," to the address in Ordering Provision No. 1 above.
3. The provisions of this Agreed Order shall apply to and be binding upon the City. The City is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
4. If the City fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the City's failure to comply is not a violation of this Agreed Order. The City shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The City shall notify the Executive Director within seven days after the City becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the City shall be made in writing to the Executive Director. Extensions are not effective until the City receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the City if the Executive Director determines that the City has not complied with one or more of the terms or conditions in this Agreed Order.
7. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
8. This Agreed Order, issued by the Commission, shall not be admissible against the City in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
9. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
10. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

5/21/2008
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of the City of Gainesville. I am authorized to agree to the attached Agreed Order on behalf of the City of Gainesville, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, the City of Gainesville waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

3/26/08
Date

TAD W. JENKINS

Name (Printed or typed)
Authorized Representative of
City of Gainesville

Project Manager

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

the following information is being furnished to you for your information and use. This information is being furnished to you for your information and use. This information is being furnished to you for your information and use.

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